



Kristy D. Clark
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VIA E-FILE

September 24, 2008

Ms Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35164; BNSF Railway Company – Petition for Declaratory Order

Dear Acting Secretary Quinlan.

Enclosed for filing in the above-referenced docket is BNSF's Motion to Strike Kessler's Reply and Motion to Strike or Reject Motion to Compel and Motion to Cease and Desist.

If you have any questions, please call me at (817) 352-3394.

Sincerely,

Kristy D. Clark
General Attorney

KDC/js

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35164

BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

**MOTION TO STRIKE KESSLER'S REPLY
AND
MOTION TO STRIKE OR REJECT MOTION TO COMPEL
AND MOTION TO CEASE AND DESIST**

**David Rankin
Kristy Clark
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Ft Worth, TX 76131-2828
(817) 352-3394**

Dated: September 24, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35164

BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

MOTION TO STRIKE KESSLER'S REPLY
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MOTION TO STRIKE OR REJECT MOTION TO COMPEL
AND MOTION TO CEASE AND DESIST

INTRODUCTION

On July 15, 2008, BNSF Railway Company ("**BNSF**") filed a petition, pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, requesting the Surface Transportation Board ("**Board**" or "**STB**") to institute a declaratory order proceeding to terminate a controversy or remove uncertainty with respect to two track relocation projects in Oklahoma City, Oklahoma (the "**Petition**"). One of the projects will involve the relocation of the portion of BNSF's Chickasha Subdivision located between milepost 540.15 and milepost 539.96 ("**Eastern Segment**") in about 16 months. The other project was the near-term need to relocate a short segment of BNSF's Chickasha Subdivision located between milepost 540.15 and milepost 541.69 ("**Middle Segment**"). BNSF is undertaking these projects at the request of the Oklahoma Department of Transportation ("**ODOT**") to facilitate the Oklahoma City I-40 Crosstown Relocation project ("**Highway Project**").

Since the Petition was filed, ODOT, the Mayor of Oklahoma City and the Greater Oklahoma City Chamber ("Chamber") have filed letters supporting BNSF's request and urging the Board to expedite the processing of this proceeding. Comments in opposition to the Petition have been filed by Mr. Kessler ("Kessler Comments"), OnTrac and Robert Waldrop.

On August 25, 2008, BNSF filed an Amendment to the Petition, Response to Comments and Renewed Request for Expedited Handling ("BNSF Response") in which BNSF: (1) brought to the Board's attention that the United States District Court for the Western District of Oklahoma had granted BNSF's motion to dismiss Mr. Kessler's ("Kessler") Complaint on grounds that the Board had exclusive jurisdiction over the matter; and (2) responded to the comments filed in this proceeding.

On September 5, 2008, Kessler filed: (1) Kessler's Reply to BNSF's Amendment to Petition ("Kessler Reply"); and (2) Motion to Compel and Motion to Cease and Desist ("Kessler Motions").

In the Kessler Reply, Kessler claims to have a burning desire to preserve rail service on the Chickasha Subdivision Kessler Reply at 11. But Kessler's real motives are to derail the Highway Project in order to preserve a former rail yard which no longer has any tracks. His repetitive filings of irrelevant and immaterial information are designed to delay this proceeding which, in turn, delays the Highway Project. There are several segments of BNSF track on the Middle Segment that must be removed in order for the Highway Project to continue and BNSF has refused to remove those tracks until the Board rules in this proceeding. Every day Kessler can delay this proceeding with his abusive and dilatory tactics is a victory for Kessler because of the attendant delay in the Highway Project.

Kessler states that he has suggested four alternative highway routes to ODOT that would satisfy his vision of future public transit in Oklahoma City and interstate rail passenger operations emanating from Oklahoma City. *Id.* But the routing of the highway and future transit operations are not matters for BNSF or this Board to resolve. In this to date 3-year ordeal, BNSF has simply attempted to be a good corporate citizen by relocating tracks that stood in the way of the Highway Project, as long as the relocations did not adversely affect service to BNSF's customers. As BNSF has previously noted, the current highway route was approved by numerous duly elected and appointed governmental officials. Also, ODOT has explained to concerned citizens that the chosen route for the highway would not impede future transit and passenger rail options under consideration in the area of Union Station in Oklahoma City. *See* Exhibit 1. But those transit options also do not please Kessler because they are not of his design. Kessler apparently has anointed himself as the sole determiner of where highways and transit systems should be located in Oklahoma City and he is abusing the good offices of this Board in his quest. It appears that Kessler believes that if he can use this Board to delay the Highway Project long enough, ODOT will be forced to redesign the Oklahoma City transportation infrastructure to meet Kessler's desires.

MOTION TO STRIKE KESSLER REPLY

BNSF hereby moves the Board to strike the Kessler Reply, pursuant to 49 C.F.R. § 1104.13(c), as an impermissible reply to the BNSF Response. While the Board may allow additional pleadings, for good cause, Kessler has neither requested leave to file the Kessler Reply nor has he demonstrated good cause. *See CSX Corp. – Control – Chessie System, Inc. Et Al., 2 S.T.B. 554, 556-57 (1997) (“Chessie”), St. Louis Southwestern Ry Co. Compensation – Trackage Rights, 4 I.C.C.2d 668, 673 (1987)* Other than one issue which has no relevance to this

proceeding and is addressed briefly below, the Kessler Reply introduces no newly discovered evidence. Rather, the Kessler Reply reiterates the same tired and erroneous assertions that he has made over and over again in this proceeding and in *BNSF Railway Company -- Abandonment Exemption -- In Oklahoma City, OK*, STB Docket No. AB-6 (Sub-Bo. 430X) ("**OK Abandonment Proceeding**").

Pursuant to 49 C.F.R. § 1104.8, the Board may strike any redundant, irrelevant, immaterial, impertinent, or scandalous matters. The Kessler Reply qualifies on all counts. Most of the information – or more correctly disinformation – contained in the Kessler Reply is irrelevant and immaterial to this proceeding and has been repeated in prior Kessler filings. In fact, Kessler proudly boasts in the Kessler Comments that he filed **14 times** in the OK Abandonment Proceeding. Kessler Comments at 5. The Kessler filings are iterative but Kessler considers himself unconstrained by the Board's Canons of Ethics because he is neither an attorney nor a Board registered practitioner. Based on Kessler's assertions in the Kessler Comments, it appears that Kessler feels he is entitled to abuse the Board's Rules of Practice and file whatever information he wants (whether false or not), whenever he wants (14 filings in the OK Abandonment Proceeding) and in whatever proceeding he wants (the Kessler Motions have nothing to do with this proceeding). It is time for the Board to prohibit Kessler's continued abusive behavior by striking the Kessler Reply and the Kessler Motions. The record in this proceeding and the OK Abandonment Proceeding demonstrate that Kessler is a habitual abuser of the Board's Rules of Practice.

Pursuant to 49 C.F.R. § 1104.4, a pleading signed by a practitioner or attorney need not be verified unless otherwise required by the Board's rules. While Kessler may not be bound by

the Board's Canons of Ethics, he is subject to Rule 1104.4. Since neither the Kessler Reply nor the Kessler Motions is properly verified, both must be stricken from the record.

Some examples of the redundant and irrelevant information contained in the Kessler Reply are as follows:

Over and over again Kessler has claimed that the Shields Spur turnout no longer exists. Not only has BNSF disputed that contention but Kessler's own evidence demonstrates that the turnout is undisturbed. Attached in Exhibit 2 are two photographs from Kessler's March 24, 2008 filing in the OK Abandonment Proceeding.¹ The Shields Spur turnout is the track on the right hand side of the photographs turning from the south to the east. The turnout is depicted in both pictures. Moreover, Kessler previously noted that BNSF was serving Producers Cooperative Oil Mill ("Producers") via the Red Rock Subdivision over the Shields Spur using a short segment of the Chickasha Subdivision and then over a switch to Producers. The only way that service can be provided to Producers is over the Shields Spur turnout. If, as Kessler erroneously alleges, the Shields Spur turnout was removed sometime between February 26, 2008 and March 17, 2008, then service to Producers would have ceased. Moreover, Kessler now concedes that service to Producers and Mid-States Wholesale Lumber ("Mid-Sates") will be unaffected by the BNSF relocation projects involved in this proceeding which, of course, would not be the case if the turnout were missing. Kessler Reply at 6.

Next, Kessler reiterates his erroneous contention that BNSF severed the connection of the Chickasha Subdivision from the national network near Milepost 540.8 by removing the crossover track to the Union Pacific Railroad Company ("UP"). Attached as Exhibit 3 to the BNSF Response is a photograph demonstrating that the portion of the connecting track located

¹ It is obvious from the photographs that Mr. Elmore, the photographer, was trespassing when the pictures were taken. Apparently, Kessler and his cohorts also have no regard for property rights.

on BNSF property is still in place. Kessler claims that he has personally viewed the crossover and the picture can't be accurate because the line depicted in the picture "makes a substantial zig-zag" and "there are no zig-zags in the Chickasha Line at this location." Kessler Reply at 4. The picture in Exhibit 3 to the BNSF Response is an accurate depiction of the crossover tracks near Milepost 540.8. Attached as Exhibit 3 to this Motion is an e-mail from ODOT to BNSF, dated August 8, 2008, pointing out that UP removed its portion of the connecting track and requesting BNSF to remove the BNSF portion of such track. Also attached as part of Exhibit 3 are 5 photographs which clearly and unequivocally demonstrate that BNSF's portion of the connecting track is still in place. The facts are what they are and not what Kessler claims them to be in the world according to Kessler.

In his ongoing attempt to mislead and distort, Kessler accuses BNSF of uttering "another falsehood" by claiming that the relocation of the BNSF line suggested by Kessler would have destroyed a public baseball field. Kessler claims that "[t]here are no public baseball fields in the portion of the Middle Segment where ODOT propose to build its freeway." Kessler Reply at 5-6. BNSF did not say the highway would cross the baseball field, but rather that the relocated BNSF line would cross the field, if placed where Kessler would like it located²

Kessler further claims that, in the BNSF Response, "BNSF incorrectly states that BNSF's proposed relocation projects would adversely affect only two shippers." Kessler Reply at 6. BNSF made no such statement. BNSF stated that if it had relocated the Middle Segment to the Kessler preferred location "it would have been extremely difficult, if not impossible, to preserve service to" Producers and Mid-States.

² BNSF suggests that next time Kessler is trespassing on BNSF property searching for the non-missing crossover tracks he should venture down SW 9th Street to the corner of S Western Ave and take in a ball game on the public field.

Kessler concedes that there are no shippers located on the Middle Segment and that the two shippers located adjacent to the Eastern Segment will be unaffected by the relocation projects. Since these facts are inconvenient for Kessler, he claims that the relocation of the Middle Segment will adversely affect service to Boardman, Incorporated ("Boardman") which is located to the west of the Middle Segment. Kessler's reasoning is follows: Boardman's switch is located 300 feet to the west of western end of the Middle Segment, but the tracks in Boardman's facility are 600 feet long, therefore, Boardman would require an additional 400 feet of track to the east so that all of the cars sitting on the Boardman tracks can be moved to make room for a new shipment without blocking McKinley Avenue. Kessler Reply at 8.

Kessler's reasoning is wrong in several respects. First, Boardman shipped a grand total of three cars in eight years. Consequently, all of the cars shipped by Boardman in eight years could be held on the line between the Boardman switch and the western end of the Middle Segment. Second, according to county tax records, the track into the Boardman facility is 534 feet in length, but 254 feet of the track is on the BNSF mainline and can not be used for storage. Consequently, Boardman only has 280 feet of storage in its facilities which is considerably less than the 840 feet of track between the Middle Segment and the Boardman switch. Third, it appears Boardman does not own the tracks in its facility and, therefore, has no legal right to store cars on those tracks. Fourth, Boardman could not possibly load more than one 200-foot unit at a time because it does not have space for more rail cars.³ Fifth, Kessler states that Boardman's sole rail needs are outbound shipments. If that is the case, there would never be a need to move cars from the tracks on Boardman's facility to the tracks east of Boardman. If the cars in the

³ The type of railcars Boardman would utilize range from 65 to 70 feet in length. Boardman would, therefore, not be able to accommodate four 70-foot cars and would have to insist on shorter cars.

Boardman facility are empty, Boardman would not be in need of more empties. If the cars are loaded, BNSF would first pull the loaded cars and later bring the new empties. Fifth, even if the track to the east of Boardman is inadequate, which it is not, cars could temporarily be stored on the Packingtown Lead which is only a few blocks from the Boardman facility.

Boardman clearly does not need more track to the east of its facility in order to receive rail service from the west which is how Boardman was traditionally served. The only reason Kessler wants to move the western end of the Middle Segment to Milepost 541.4, is because at that location the BNSF tracks would interfere with the Highway Project. Kessler could care less about rail service to Boardman, he only wants to destroy the Highway Project.

Kessler also claims it would be extremely difficult to remove the signal mast to the west of Boardman which was placed at that location because the line to Boardman had been dormant for 5 years. But it should be obvious even to Kessler that, if the mast was put in, the mast can be taken out.

In an ongoing attempt to distort, Kessler refutes BNSF statement that Producers and Mid-States were once served directly from the Red Rock Subdivision. In the first place, since Kessler concedes that neither of these shippers will be adversely affected by the relocations, Kessler's contention is irrelevant to this proceeding. In any event, BNSF maps verify the accuracy of this statement. Moreover, some of Kessler's aerial photographs in the OK Abandonment Proceeding show remnants of the old spur tracks.

MOTION TO STRIKE OR REJECT KESSLER MOTIONS

For all of the foregoing reasons, BNSF hereby moves the Board also to strike the Kessler Motions pursuant to the provisions of 49 C.F.R. §§ 1104.4, 1104.8, and 1104.13(c).

Alternatively, BNSF hereby moves the Board to reject the Kessler Motions. The Kessler styled "Motion to Compel" would have the Board issue an order requiring BNSF to replace track that was removed to accommodate the Highway Project. The Motion to Cease and Desist seeks an order precluding BNSF from removing any additional tracks in the way of the Highway Project. In this proceeding, BNSF is seeking a ruling from the Board that no Board approval is required for the relocation of the rail lines comprising the Middle Segment and the Eastern Segment. Consequently, if BNSF's position is correct, the removal of the old tracks in those two segments was and continues to be lawful. Kessler cynically seeks to have the Board issue an order compelling action by BNSF before the Board determines whether it has jurisdiction over those actions.

To the extent any tracks were removed from the rail line located between mileposts 541.69 and 542.91 ("Western Segment"), that is a matter outside the scope of this proceeding. BNSF initiated this proceeding seeking a ruling as to the Board's jurisdiction over the relocations of the Eastern Segment and Middle Segment. While Kessler may believe he has an ordained right to dictate the transportation infrastructure in Oklahoma City, he does not have the right to dictate the scope of this proceeding.

The Motion to Compel includes a request that the Board order BNSF to deliver a shipment to the Boardman facility. Again, this is a matter totally outside the scope of this proceeding. If Kessler wishes to pursue that matter, he should be required to file an action in a separate proceeding and pay the appropriate filing fee.

BNSF will not fully respond in this proceeding and at this time to the Kessler allegations concerning "rail car HTTX 93507" ("Kessler Shipment") because: (1) that is a matter outside

the scope of this proceeding; and (2) it concerns a matter that is currently under investigation by BNSF.

The Kessler Shipment is not a legitimate shipment but rather a fraudulent ploy by Kessler and his cohorts in their overall scheme to derail the Highway Project.⁴ But it is a ploy that could have had serious consequences. While en route to the Boardman facility, BNSF determined that rail car HTTX 93507 was defective and in need of repair. If this defect had not been timely uncovered by BNSF, the Kessler Shipment could have been the cause of a derailment with significant economic and possibly human losses. BNSF takes this matter very seriously, as should the Board, because Kessler's prank could have produced disastrous results.

A very brief summary of what BNSF has learned to date about Kessler's prank follows: On July 29, 2008, an individual who identified himself as Edwin Kessler consigned a shipment of "scrap" (STCC 4021125) to a consignee named Edwin Kessler, care of Boardman. It turns out the Kessler Shipment is actually a locomotive but it remains unclear whether it is a functional locomotive. Subsequently, the consignee was changed to Edwin M Knowles China Company, which ceased operations in 1962. In other words, both the cargo and consignee appear to have been falsely represented.

On August 19, 2008, an individual named Eric S. Strohmeyer ("Strohmeyer"), of CNJ Rail Corporation ("CNJ"), contacted the General Manager of Stillwater Central Railroad, Inc. ("Stillwater"), representing himself as the owner of the Kessler Shipment. Shortly thereafter, Strohmeyer sent an e-mail to Stillwater in which he misrepresented statements made by Stillwater's General Manager. Before Stillwater had an opportunity to respond, Strohmeyer

⁴ In the Kessler Reply, Kessler claims that it is Boardman that is testing BNSF. The complicity of Boardman in this fraudulent shipment is still under investigation.

maliciously sent the e-mail containing libelous misrepresentations to third parties. Stillwater's response to Strohmeyer is attached as Exhibit 4.⁵

The Kessler Shipment was consigned to a track located on the Boardman facilities. It appears, however, that the track is owned by BNSF and Boardman has no agreement with BNSF that would allow Boardman or Kessler to use the track. Even if the track were owned by Boardman, Boardman has no industry track agreement with BNSF and, therefore, BNSF would not be able to lawfully operate over that track. Consequently, the Kessler Shipment was erroneously consigned to a track on which neither Kessler nor Boardman may lawfully receive a rail shipment. Given the status of that track, BNSF contacted Mr. Merry at Boardman and offered to deliver the shipment to Boardman by transload. Mr. Merry refused to accept the shipment stating that the car was ordered for political reasons.⁶

Aside from the damage Kessler's prank could have caused, it is a criminal offense to falsify a bill of lading. The perpetrators of such a criminal activity, as well as all coconspirators, are subject to fines and up to 5 years imprisonment. 49 U.S.C. § 80115. Obviously, Congress intended to treat the falsification of bills of lading in a serious manner and so does BNSF.

The fraudulent Kessler Shipment is the latest example of the lengths (or depths) to which Kessler will go to derail the Highway Project.

CONCLUSION

⁵ BNSF is still investigating the possible participation of another individual, James Riffin, in the fraudulent Kessler Shipment.

⁶ The Kessler Shipment currently sits in a yard in Oklahoma City. Because (i) the Shipment may not be lawfully delivered to the designed destination, (ii) Boardman will not accept a transload delivery, and (iii) Kessler has declined to reroute the Shipment to another location, the Shipment is accumulating demurrage charges daily. With every passing day, Kessler's prank gets more expensive

For all the foregoing reasons, BNSF respectfully urges the Board to strike the Kessler Reply and to strike or reject the Kessler Motions. BNSF also reiterates its request for expeditious processing of this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristy Clark", is written over a horizontal line.

David Rankin
Kristy Clark
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131-2828

Dated: September 24, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been served on the following entities by first class mail this 24th day of September, 2008.

Fritz Kahn
8th Floor
1920 N Street, N.W.
Washington, DC 20036-1601

Edwin Kessler
1510 Rosemont Drive
Norman, Oklahoma 73072

Robert M. Waldrop
1524 NW 21
Oklahoma City, OK 73106

OnTrac
Post Office Box 984
Norman, OK 73070

Joseph T. Merry
Vice President
Boardman, Incorporated
1135 S McKinley Avenue
Oklahoma City, OK 73108-7012

Krista Clark/af

EXHIBIT 1

Andrew Magbee
4908 N. Pate Ave
OKC, OK 73112

Dear Mr. Magbee,

Thank you for your letter regarding the I-40 Crosstown Expressway and congratulations on striving to achieve your "Citizenship in the Community" merit badge. Being an active Boy Scout is an honorable endeavor and the lessons you learn now will assist you throughout the rest of your life.

Regarding the interaction between the relocation of the I-40 Crosstown Expressway and the historic Union Station property, please accept the following information:

There are currently two active rail lines located just south of the Union Station. The remainder of the former yard is currently unusable due to the fact that the railroad companies have removed many of the tracks and any other remaining track is unserviceable.

The northernmost of the two active lines is operated by the Union Pacific (UP). This line will be depressed, along with the roadway, from approximately Santa Fe Ave. to approximately Western Ave. and maintain approximately the current alignment. The UP line will be far enough to the south to allow for a second track to be installed in the future in the event that passenger rail activities ever return to Union Station.

Just to the south of the UP line is an east-west line belonging to the Burlington Northern Santa Fe (BNSF). This line will be removed and the trains diverted to the south of the North Canadian River on an existing east-west line referred to as the Packingtown Lead. Utilization of this line and the existing north-south BNSF mainline in conjunction with improvements to the Flynn Yard will ensure continued service for the area, particularly continuing the connection between the area of Will Rogers World Airport and downtown.

It should be noted that at-grade railroad crossings are being eliminated at the following locations: UP at Shartel Ave., BNSF at Shartel Ave., UP at Western Ave., BNSF at Western Ave., and UP at Pennsylvania. Additionally, train traffic will be greatly reduced at the following BNSF crossings: SW 15th, Sulzberger Ave., Indiana Ave. and McKinley. These changes all reduce the chances for vehicle-train interaction and increase safety.

Your comparison between the Dallas Area Rapid Transit (DART) system and a potential system here has been previously discussed at length with rail proponents in Oklahoma City. Please realize that the situations of the two metropolitan areas vary by a substantial amount. The 2000 census shows a population of 1,083,346 and a land area of 4,247 square miles for the metropolitan Oklahoma City area. This gives a population density of 255.1 persons per square mile. In the 2000 census, the Dallas metropolitan area shows a population of 5,221,801 with a land area of 9,104 square miles. This gives a population density of 573.6 persons per square mile. As you can see from these numbers, the Dallas area has a population of almost five times that of Oklahoma City, and by comparing the population density listed for each area, you can see that there are over twice as many people per square mile in the Dallas area as here. Congestion within the Dallas metropolitan area is significantly higher than that experienced in Oklahoma City. A fixed guideway - rail - transit system works in areas of high demand with a localized destination areas, such as concentrated business districts. Oklahoma City has avoided having a high concentration by allowing growth to occur across the city.

Some proponents of the DART system claim that it has a daily ridership of up to 43,000 per day. If the ridership for Oklahoma City would be similar in regards to population, then the system would carry 8,921 per day. Today, the I-40 Crosstown Expressway carries an annual average daily traffic of 119,600. Even if each of those almost 9,000 riders came from traffic utilizing the Crosstown, the facility would still be carrying in excess of 110,000 vehicles per day. That facility was designed to carry 76,000 per day.

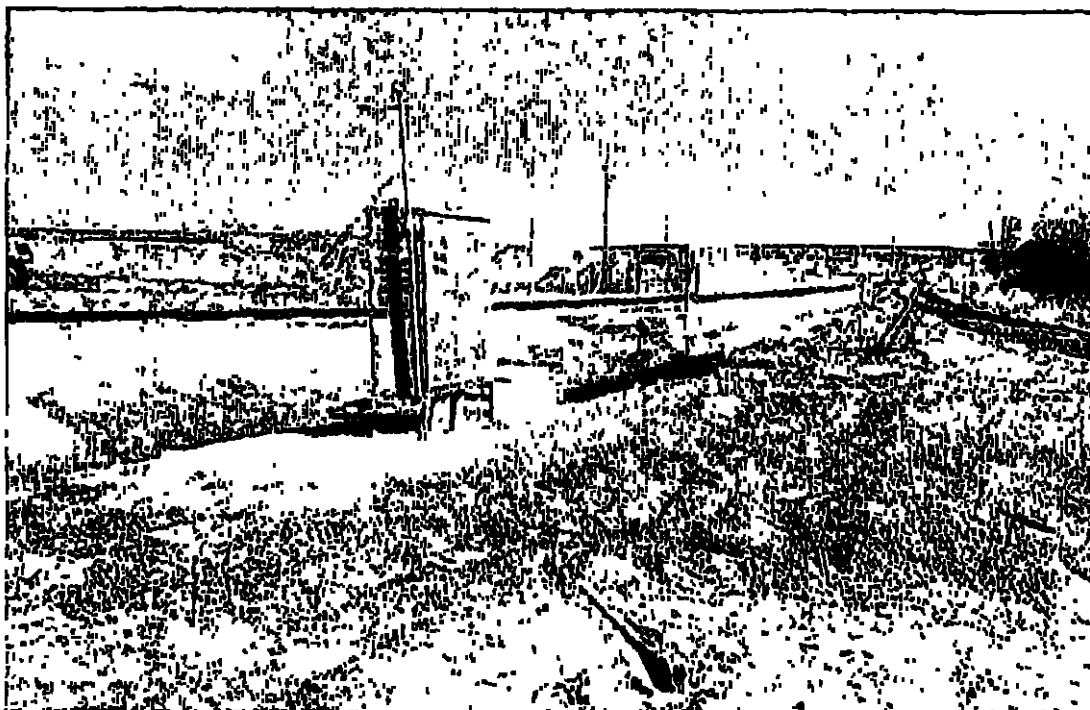
Please know that ODOT is giving considerations for rail transit. There have been numerous studies completed regarding that issue. In reviewing the 1992 Oklahoma Fixed Guideway Transportation Study, the 1995 Central Oklahoma Transportation and Parking Authority (COTPA) major investment study of transit corridor linkages entitled "The Link", the COTPA 2001 Long Range Transit Plan, the 2025 Oklahoma City Area Regional Transportation Study Plan, the January 2002 revised version of the 2001 High Speed Passenger Rail Feasibility Study and the 2002 Oklahoma High-Speed Rail Initiative - Oklahoma City to Tulsa High-Speed Rail Corridor Cost Study, there are no plans or recommendations for the use of Union Station as a passenger rail facility. Currently, the passenger rail facility serving Oklahoma City is the Santa Fe Station located adjacent to downtown and Bricktown on the BNSF mainline just three blocks east and six blocks north of Union Station. However, as stated earlier in this letter, the I-40 project is being designed with sufficient room for a second track to be installed next to Union Station at some point in the future if passenger rail service is ever returned to Union Station.

The Department appreciates your efforts to better the Oklahoma transportation system and should you have any other questions or concerns, please feel free to contact me at 521-6916.

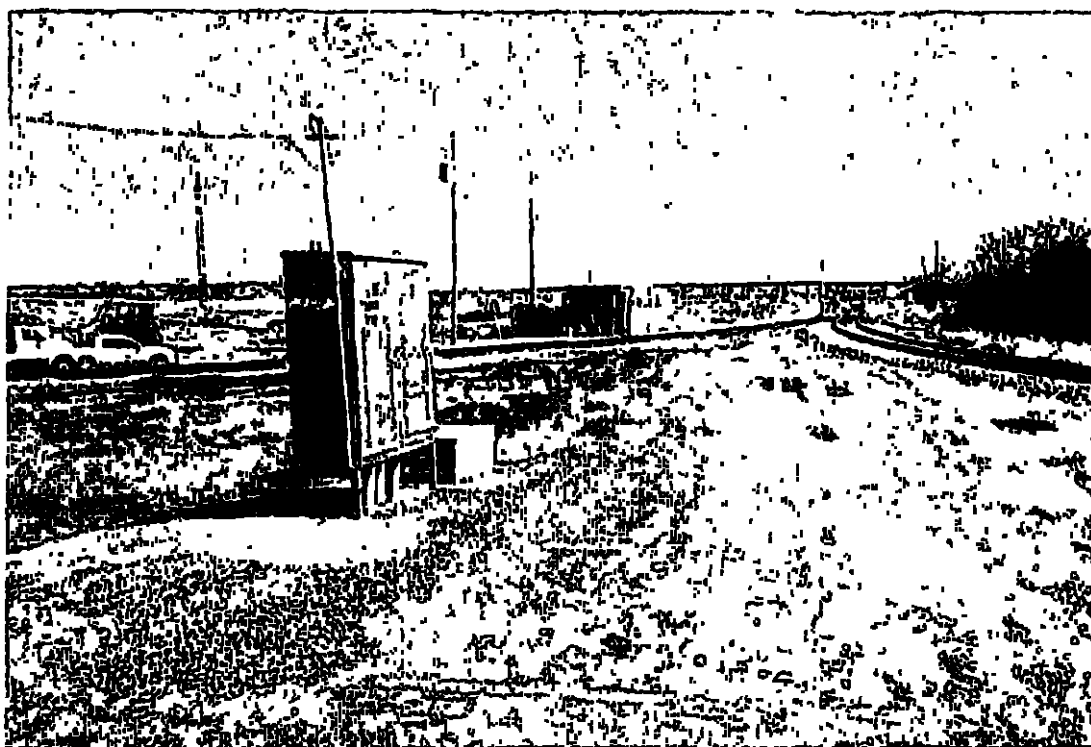
Sincerely,

John R. Bowman, P.E.
Project Development Engineer
Office of the Chief Engineer
Oklahoma Department of Transportation

EXHIBIT 2



Chickasha / Frisco Line at MP 540.20 – Looking East – Photo by T. Elmore
TURNOUT IN PLACE ON FEBRUARY 26, 2008
100+ feet of Chickasa Line still in place.



Chickasha / Frisco Line at MP 540.20 – Looking East – Photo by T. Elmore
TURNOUT UNLAWFULLY REMOVED – Date Photo Taken: March 17, 2008
100+ feet of Additional Chickasa Line Unlawfully Removed.

EXHIBIT 3

Sims, John A

From: jhatt@ODOT ORG
Sent: Friday, August 08, 2008 3:26 PM
To: Arndt, Spencer D
Cc: Thompson, French F; Odom, Susan; Thomson, William D
Subject: BNSF Track Removal

Follow Up Flag: Follow up
Flag Status: Purple

Attachments: 0648_001.pdf, 0668_001.pdf



0648_001.pdf (4
MB)



0668_001.pdf (1
MB)

Spencer,

Attached are some photos of BNSF track that was once part of a connection track between BNSF Chickasha and UPRR mainline track alignment. The subject track is at the west end of proposed UPRR chickasha shoofly alignment (Shartel Ave.) UPRR has previously removed their part of track connection up to common R/W line between BNSF and UPRR.

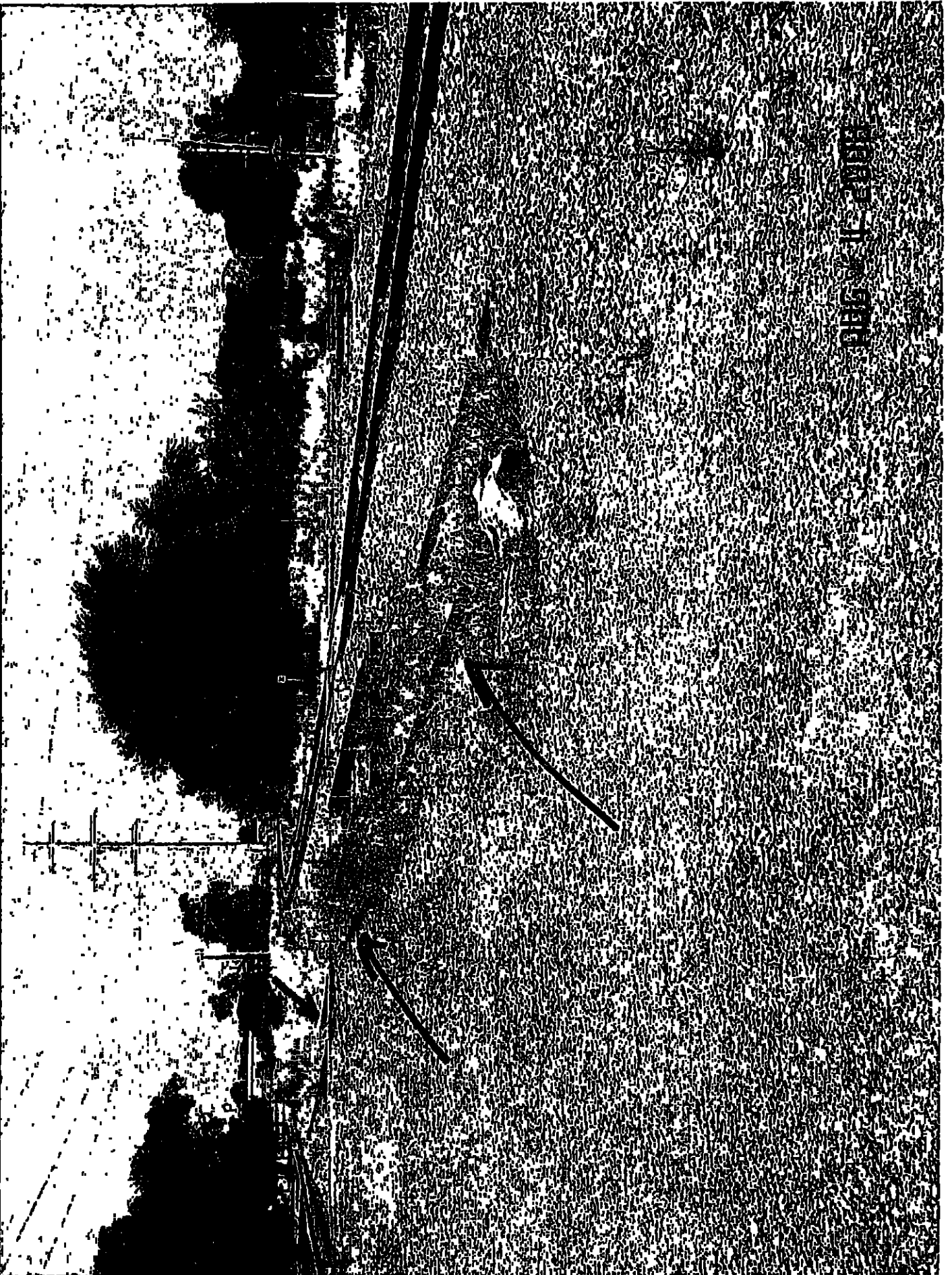
This track needs to be removed as soon as possible

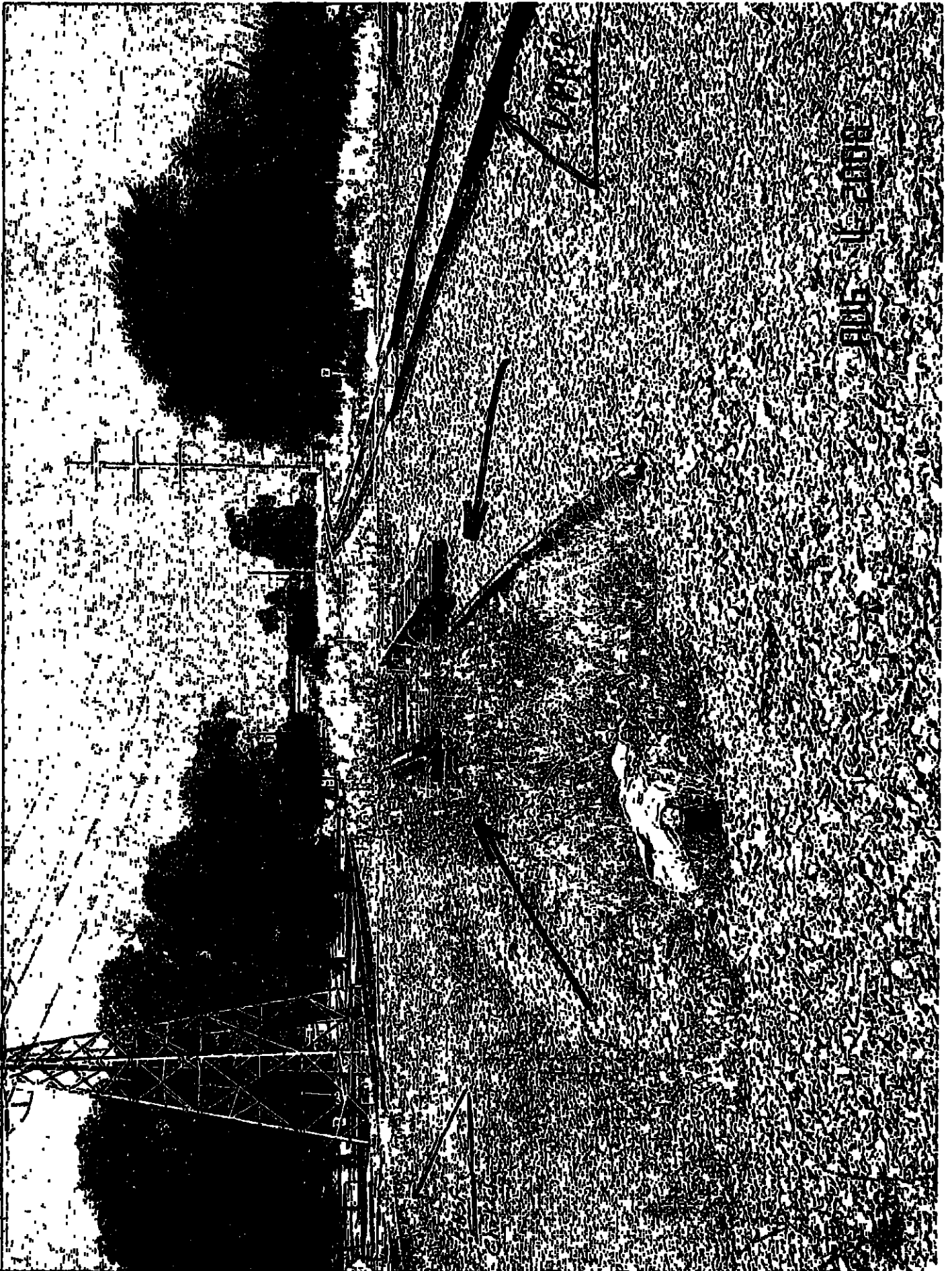
ODOT will reimburse BNSF for the cost of removing the track.

Please give me a call and we can discuss further.

Jim Hatt
405-522-0287
(See attached file: 0648_001.pdf)
(See attached file: 0668_001.pdf)

1986-11-2001

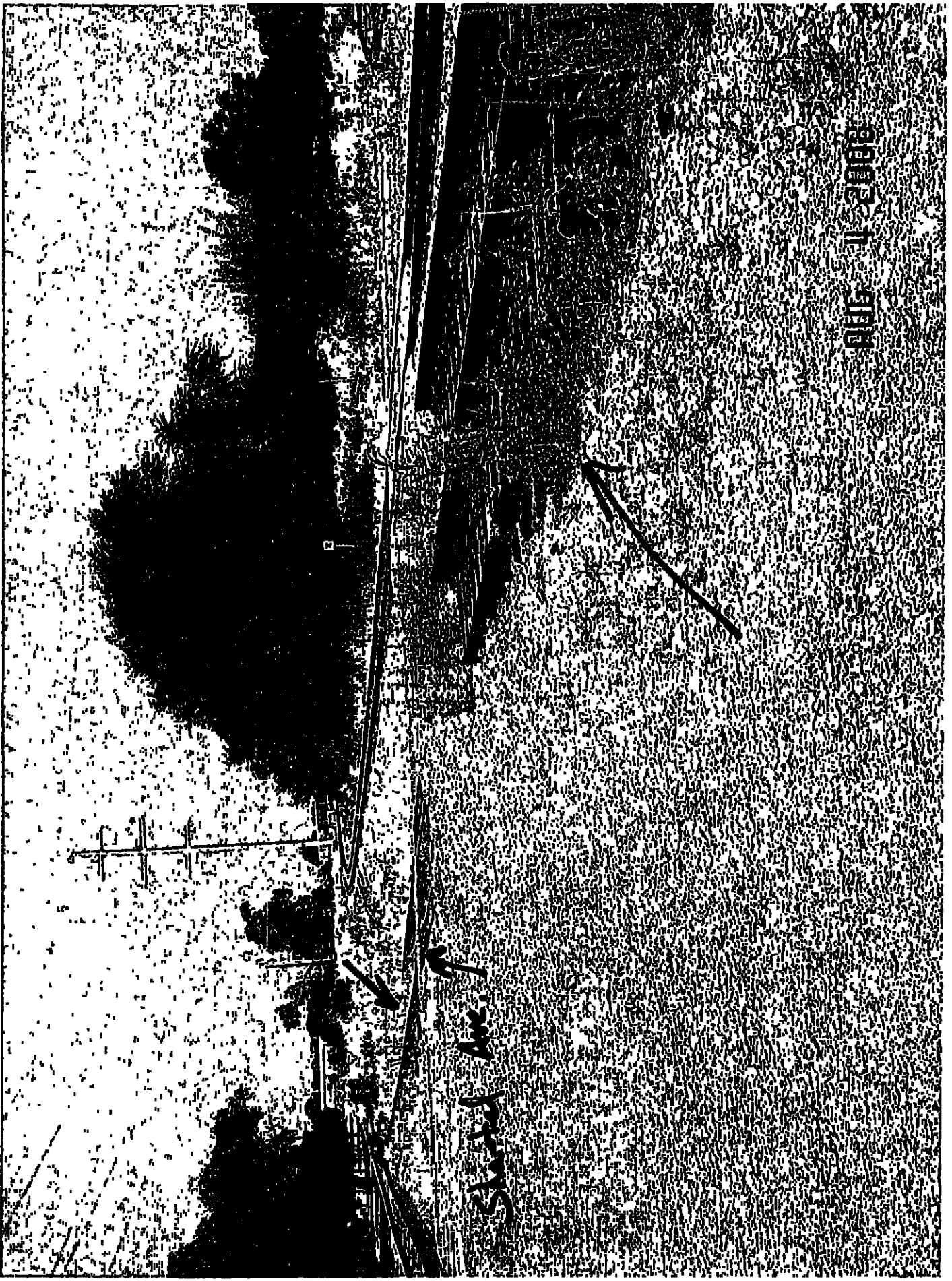




8002-1-008

8002-1-5110

Shut down



For the best possible print results, click the printer icon on the Live Search Maps page.

Location result for

~~7210 NW 30th Expy, Bethany, OK 73008-2305~~



Track that needs
to be removed.

4
N

For the best possible print results, click the printer icon on the Live Search Maps page

Location result for

~~7210 NW 30th Expy, Bethany, OK 73008-2585~~



EXHIBIT 4

From: Morell, Karl
Sent: Friday, August 22, 2008 3:45 PM
To: 'esstrohmeyer@yahoo.com'
Cc: Craig Richey
Subject: Stillwater Central

Mr. Strohmeyer, my name is Karl Morell and I represent Stillwater Central Railroad. Yesterday you sent an email to Mr. Pena, General Manager of Stillwater Central, in which you purported to summarize a telephone conversation between you and Mr. Pena on August 19, 2008 concerning the shipment of a locomotive. You asked Mr. Pena to respond if he disputed your characterization of the conversation

I understand that you misrepresented yourself to Mr. Pena as the owner of the locomotive and that Mr. Pena disputes the accuracy of your description of the phone conversation.

It has come to our attention that before Mr. Pena had an opportunity to respond to your email you forwarded the email to a number of third parties essentially representing to those third parties that Mr. Pena agreed with your description of the phone conversation.

Stillwater insists that you immediately stop all further dissemination of the email, that you immediately retract all emails that have been forwarded to third parties and that you identify to Stillwater all parties to whom you have forwarded the email

Stillwater intends to hold you personally liable for any damage your email inflicts on Stillwater and Mr. Pena. In order to mitigate your damages, I suggest you take these actions immediately.

Karl Morell

Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, DC 20005

kmorell@dc bjllp.com
Tel 202-638-3307
Fax 202-783-6947

Please be advised that, to the extent this communication contains any advice or opinions concerning federal tax matters, it is not intended to be, and may not be, used or relied upon by any taxpayer for the purpose of avoiding penalties under federal tax law.

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